

**Three Violations of the Fair Debt Collection  
Practices Act Resulted in Administrative  
Actions**

**July 2003**

**Reference Number: 2003-10-138**

**This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.**



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

INSPECTOR GENERAL  
for TAX  
ADMINISTRATION

July 11, 2003

MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT  
CHIEF COUNSEL

*Gordon C. Milbourn III*

FROM: Gordon C. Milbourn III  
Assistant Inspector General for Audit (Small Business and  
Corporate Programs)

SUBJECT: Final Audit Report - Three Violations of the Fair Debt Collection  
Practices Act Resulted in Administrative Actions  
(Audit # 200310014)

This report presents the results of our Fiscal Year 2003 Fair Debt Collection Practices Act (FDCPA)<sup>1</sup> review. The overall objective of this review was to obtain information on the Internal Revenue Service's (IRS) administrative and civil actions resulting from violations of the FDCPA. Section 1102(d)(1)(G) of the IRS Restructuring and Reform Act of 1998 (RRA 98)<sup>2</sup> requires the Treasury Inspector General for Tax Administration to include in one of its semiannual reports to the Congress information regarding any administrative or civil actions related to violations of the FDCPA. The semiannual report must provide a summary of such actions and include any judgments or awards granted.

In summary, our review of 44 cases coded as potential FDCPA violations identified 3 FDCPA violations that resulted in administrative actions and were closed during January 1 through December 31, 2002. However, there were no civil actions that

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<sup>1</sup> Fair Debt Collection Practices Act, 15 U.S.C. §§ 1601 note, 1692-1692o (2000).

<sup>2</sup> IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

resulted in the IRS paying monetary settlements to taxpayers because of an FDCPA violation.

Management's Response: IRS management agreed with the observations in our discussion draft report. Therefore, we did not ask the IRS for a formal response.

Copies of this report are also being sent to the IRS managers who are affected by the report findings. Please contact me at (202) 622-6510 if you have questions or Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

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### Background

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Section 1102 (d)(1)(G) of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98)<sup>1</sup> requires the Treasury Inspector General for Tax Administration to include in one of its semiannual reports to the Congress information regarding any administrative or civil actions related to Fair Debt Collection Practices Act (FDCPA)<sup>2</sup> violations by IRS employees. The semiannual report must provide a summary of such actions and include any judgments or awards granted.

Because the Congress did not provide an explanation of what was meant by “administrative actions,” we used the IRS’ definition when determining the number of FDCPA violations to be reported under Section 1102 (d)(1)(G). The IRS’ definition of administrative actions includes disciplinary actions ranging from admonishment through removal. Lesser actions, such as oral or written counseling, are not considered administrative actions.

As originally enacted, the FDCPA included provisions that restricted various collection abuses and harassment in the private sector. These restrictions did not apply to Federal Government practices. However, the Congress believed that it was appropriate to require the IRS to comply with applicable portions of the FDCPA and to be at least as considerate to taxpayers as private creditors are required to be with their customers (see Appendix IV for a detailed description of the FDCPA provisions).

Taxpayer complaints about IRS employees’ conduct can be reported to several IRS functions for tracking on management information systems. If a taxpayer files a civil action or if IRS management determines that the taxpayer’s FDCPA rights were potentially violated, the complaint could be referred and then tracked on one or both of the following IRS systems:

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<sup>1</sup> IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

<sup>2</sup> Fair Debt Collection Practices Act, 15 U.S.C. §§ 1601 note, 1692-1692o (2000).

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- Office of Workforce Relations' Automated Labor and Employee Relations Tracking System (ALERTS), which generally tracks employee behavior that may warrant IRS management administrative actions.
- Office of Chief Counsel's Counsel Automated System Environment (CASE), which is an inventory control system that tracks items such as taxpayer civil actions or bankruptcies.

The IRS implemented FDCPA codes on the ALERTS in March 1999 and on the CASE in June 1999.

For the Fiscal Year (FY) 2003 review, we analyzed closed cases from the ALERTS and the CASE to identify violations of the FDCPA. However, we cannot ensure that the cases recorded on the ALERTS and the CASE constitute all FDCPA violations. As stated in our FY 2000 report on the FDCPA,<sup>3</sup> data captured on the ALERTS related to potential FDCPA violations may not always be complete and accurate. Therefore, we could not determine whether the cases recorded in the ALERTS and the civil actions recorded in the CASE included all the FDCPA violations. Nor did we determine the accuracy or consistency of disciplinary actions taken against employees for FDCPA violations that were reported to the Office of Workforce Relations.

We performed this audit in the Strategic Human Resources, Agency-Wide Shared Services, and Chief Counsel offices in the IRS National Headquarters in Washington, D.C., from March to June 2003. The audit was conducted in accordance with *Government Auditing Standards*. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

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<sup>3</sup> *The Identification and Reporting of Potential Fair Debt Collection Practices Act Violations Can Be Improved* (Reference Number 2000-10-109, dated August 2000).

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### Three Fair Debt Collection Practices Act Violations Resulted in Administrative Actions

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From our review of 44 cases coded as FDCPA violations, we identified 3 instances where the violation resulted in administrative action against the employee.<sup>4</sup>

In the first case, an IRS employee allegedly made inappropriate remarks to the taxpayer while discussing a tax issue. The taxpayer was offended by the remarks and terminated the telephone call. The taxpayer reported the incident to his/her Congressional representative and the IRS Taxpayer Advocate Service. The IRS suspended the employee for 1 day.

In the second case, an IRS employee allegedly exhibited harassing and threatening behavior toward a taxpayer while inquiring about a notice of levy and refused to identify him/herself or his/her manager. The IRS issued the employee a letter of admonishment.

In the third case, an IRS employee allegedly harassed and threatened a taxpayer's spouse during a contact to discuss a tax issue. The IRS employee also made an unauthorized disclosure of tax information to the spouse. The taxpayer and the spouse had used the tax filing status "married filing separately." The IRS suspended the employee for 7 calendar days.

While oral or written counseling is not considered an administrative action under the IRS' definition, we did note from the ALERTS information that two other employees received written counseling for FDCPA violations during our audit period for acting in a manner unbecoming a Department of the Treasury employee, while on official duty. Since the IRS does not routinely track all informal oral counseling or minor actions against its employees, it is impossible to determine how often, and for what reasons, informal, oral counseling or other minor disciplinary actions occurred. Nevertheless, such conduct as exhibited in these cases violates the rights of the taxpayers and impairs the IRS' ability to meet its mission of providing top-quality customer service.

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<sup>4</sup> This included cases opened after July 22, 1998, and closed during the period January 1 through December 31, 2002.

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#### **No Fair Debt Collection Practices Act Civil Actions Resulted in a Monetary Settlement with a Taxpayer**

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There were no cases closed on the CASE where the IRS paid restitution to taxpayers resulting from a civil action filed due to an FDCPA violation. From January 1 through December 31, 2002, the CASE included only one closed civil action coded as an FDCPA violation. Our review of the case documentation indicated that the violation itself occurred prior to the enactment of the RRA 98 (July 28, 1998). At that time, the IRS was not subject to the FDCPA.



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### Appendix I

#### Detailed Objective, Scope, and Methodology

The objective of this review was to obtain information on the Internal Revenue Service's (IRS) administrative and civil actions resulting from violations of the Fair Debt Collection Practices Act (FDCPA)<sup>1</sup> by IRS employees. Specifically, we:

- I. Determined the number of FDCPA violations resulting in administrative actions.
  - A. Obtained a computer extract from the Automated Labor Employee Relations Tracking System (ALERTS) of all cases that were opened after July 22, 1998, and closed during the period January 1 through December 31, 2002, as FDCPA violations. The computer extract contained 44 cases.
  - B. Determined if any of the FDCPA-coded cases resulted in administrative action.
- II. Determined the number of FDCPA violations resulting in civil actions (judgments and awards granted).
  - A. Obtained a computer extract from the Counsel Automated System Environment (CASE) of all Subcategory 511 (established to track FDCPA violations) cases opened after July 22, 1998, and closed during the period January 1 through December 31, 2002. The Office of Chief Counsel identified one case.
  - B. Determined if the FDCPA-coded case resulted in civil judgments or awards.

Note: We used ALERTS and CASE data provided by the IRS and did not determine if the data provided were complete. Our validation consisted of reviewing case file documentation to ensure a potential FDCPA violation existed and comparing the information in the case files to the data received.

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<sup>1</sup> Fair Debt Collection Practices Act, 15 U.S.C. §§ 1601 note, 1692-1692o (2000).

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### **Appendix II**

#### **Major Contributors to This Report**

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Mary V. Baker, Director

James D. O'Hara, Audit Manager

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### Appendix III

#### Report Distribution List

Commissioner N:C  
Chief, Agency-Wide Shared Services A  
Chief Financial Officer N:CFO  
Director, Personnel Services A:PS  
Director, Strategic Human Resources N:ADC:H  
Director, Office of Workforce Relations N:ADC:H:R  
National Taxpayer Advocate TA  
Director, Legislative Affairs CL:LA  
Director, Office of Program Evaluation and Risk Analysis N:ADC:R:O  
Office of Management Controls N:CFO:AR:M  
Audit Liaisons:  
    Director, Strategic Human Resources N:ADC:H  
    Chief Counsel CC

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### **Appendix IV**

#### **Fair Debt Collection Practices Act Provisions**

To ensure equitable treatment among debt collectors in the public and private sectors, the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98)<sup>1</sup> requires the IRS to comply with certain provisions of the Fair Debt Collection Practices Act.<sup>2</sup> Specifically, the IRS may not communicate with taxpayers in connection with the collection of any unpaid tax:

- At unusual or inconvenient times.
- If the IRS knows that the taxpayer has obtained representation from a person authorized to practice before the IRS, and the IRS knows or can easily obtain the representative's name and address.
- At the taxpayer's place of employment, if the IRS knows or has reason to know that such communication is prohibited.

Further, the IRS may not harass, oppress, or abuse any person in connection with any tax collection activity or engage in any activity that would naturally lead to harassment, oppression, or abuse. Such conduct specifically includes, but is not limited to, the:

- Use or threat of violence or harm.
- Use of obscene or profane language.
- Causing a telephone to ring continuously with harassing intent.
- Placement of telephone calls without meaningful disclosure of the caller's identity.

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<sup>1</sup> IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

<sup>2</sup> Fair Debt Collection Practices Act, 15 U.S.C. §§ 1601 note, 1692-1692o (2000).